

SURFACE IMPOUNDMENT RETROFITTING REQUIREMENTS

April 15, 1987

MEMORANDUM

SUBJECT: Surface Impoundment Retrofitting Requirements

FROM: Bruce Weddle, Director
Permits and State Programs Division

TO: Lloyd Guerci, Director
RCRA Enforcement Division

In your memorandum of February 19, 1987, you raised several points related to the enforcement of the surface impoundment retrofit requirement. I agree with you that enforcement of this requirement will require careful preparation, and that we should provide guidance to the Regions on the relation of the retrofit requirement to permitting and closure regulations. Staff in the Permits Branch recently met with your staff to discuss the issues you raised in your memorandum and agreed that Permits and State Programs Division would take the lead in developing a directive to the Regions on these issues.

In your memorandum, you asked to be advised of regulations and guidances on permit requirements for surface impoundments that do not meet minimum technology requirements. OSW issued guidance to the Regions on this question in November 1985; I have attached the guidance for your information. Specifically, the guidance stated that permits issued to existing surface impoundments must include a condition that ensures that the impoundments will be retrofitted to meet requirements for double liners and leachate collection systems within four years of the effective date of HWSA, unless a retrofit waiver is granted (page 3 of the attachment to the memorandum). The directive that PSPD is developing will reemphasize this requirement and will further state, as you suggest, that permits should require closure of the impoundment if it does not retrofit or receive a waiver.

You also raised the issue of surface impoundments operating under interim status after November 8, 1988 that failed to retrofit, and you suggested that we consider developing a rule

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that would terminate the interim status of these units. In view of the heavy workload facing the Division, I would be reluctant to prepare such a rule unless the enforceability of the statutory language is in doubt. I don't think that is the case. The statutory language is clear that surface impoundments that fail to retrofit or that do not receive a retrofit waiver will be

required to cease receiving hazardous waste after November 8, 1988. Under current regulations, the unit would then be required to close. (Section 265.113 requires units to close after final receipt of hazardous waste.) I believe that these requirements are sufficient to force closure of impoundments that do not retrofit. If you disagree, please let me know.

Finally, you asked about the applicability of closure requirements to surface impoundments that do not retrofit. As I stated above, the closure regulations require these units to close after final receipt of hazardous waste. This requirement applies both to permitted and interim status facilities. Permitted facilities, under _264.113 would be required to close according to their approved closure plans in their permits (or according to a plan modified according to _270.41 or _270.42). Furthermore, under _264.112(d), these facilities would be required to notify EPA 60 days before they expected to begin closure, which would ordinarily be no later than 30 days after final receipt of hazardous waste. In other words, permitted facilities that fail to retrofit will be required to notify EPA 30 days before the retrofitting deadline that they were intending to close.

In the case of interim status facilities that failed to retrofit, the owner/operator would be required under _265.113 to close within 180 days of final receipt of hazardous waste (unless the closure period is extended by EPA or an authorized state). In addition, _265.112(d) would require these facilities to submit their closure plans to EPA 180 days before they expected to begin closure. This would require these facilities to submit their closure plans to EPA 150 days before the retrofitting deadline.

The closure regulations were published in the Federal Register in May 1986 and became effective in October. Under the cluster rule for state authorization, authorized states will need to modify their programs to reflect the May 1986 rule by July 1, 1987 or by July 1, 1988, if statutory changes are needed.

We intend to address these and other issues in our directive to the Regions on surface impoundment retrofitting, and we will work closely with your staff developing the directive. Please let me know if you have any questions on this response to the issues you raised, or wish to discuss any points further.

Attachment